

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1280

SPONSOR: Children and Families Committee and Senator Peadar

SUBJECT: The Medicaid Program

DATE: April 13, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This legislation removes the Developmental Disabilities program from the Department of Children and Family Services (the department or DCF) and establishes the program as “The Agency for Persons with Disabilities” (APD). The newly created agency is to be administratively housed within the department but established as a separate budget entity that is not subject to the control, supervision, or the direction of the department.

The director for this agency is to be appointed by the Governor to administer the affairs of the agency and is authorized to hire staff within available resources.

The agency has programmatic responsibility for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. However, fiscal management of the home and community-based waiver services is to be managed by the Agency for Health Care Administration (AHCA). The new agency will retain the fiscal and programmatic management of the developmental disabilities institutions and those community-based services that are currently funded by general revenue.

Effective October 1, 2004, the Developmental Disabilities program and the developmental disabilities institutions programs in the department are to be transferred to the Agency for Persons with Disabilities by a type 2 transfer. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources within the department dedicated to the program that are to be transferred to the agency and which staff persons from the department are to provide administrative support.

The Director of the Agency for Persons with Disabilities is directed to work in consultation with the Secretaries from DCF and AHCA or their designees to develop a transition plan. This plan is to be submitted to the Executive Office of the Governor and the Legislature by September 1, 2004.

The agency is directed to enter into inter-agency agreements with AHCA and DCF that delineate the responsibilities of each organization. These agreements must also address the operational support of the new agency as well as reimbursement mechanisms. The bill also directs APD, AHCA, and DCF to work together to develop a plan to ensure all necessary electronic and paper-based data is accessible to the Medicaid program. Electronic records are to be migrated to a new system that is compatible with the Florida Medicaid Management Information System.

A plan is to be developed by APD and AHCA for the relocation of the local APD staff to the AHCA area offices. Provisions of the plan are to address leases, reimbursement of collocation costs, office space, and other operating expenses. Further, effective October 1, 2004, APD is to enter into an agreement with DCF for the provision of day-to-day administrative and operational needs or APD is no longer in need of such services.

The Office of Program Policy and Government Accountability must identify and evaluate statewide entities receiving state funding to provide services for persons with disabilities. A report from OPPAGA is due to the Governor and the Legislature by December 2005.

This committee substitute additionally authorizes the department to provide its eligibility determination functions with either department staff or through a contractual agreement. These functions are currently being provided by the Economic Self-Sufficiency Program Office.

This committee substitute amends sections 20.19, 393.063, 393.064, 393.0655, 393.066, 393.0661, 393.068, 393.0695, 393.11, 393.13, 393.17, 393.22, 393.502, 408.301, 408.302, and 409.906 of the Florida Statutes. This committee substitute creates section 20.197 of the Florida Statutes. Sections 393.068 (8), 393.14, 393.165, 393.166, and 393.505 of the Florida Statutes are repealed. This committee substitute creates an undesignated section of statute.

This bill takes effect July 1, 2004.

II. Present Situation:

The Department of Children and Family Services

The mission of the Department of Children and Family Services (DCF or department) is to work in partnership with local communities to help people be self sufficient and live in stable families and communities and to deliver or provide for the delivery of all family services. The Developmental Disabilities program currently resides within the department and helps to meet its mission.

The department is responsible for the delivery of diverse programs throughout the state of Florida. Program service areas include Adult Services, Child Care Services, Developmental Disabilities, Economic Self-Sufficiency Services, Family Safety, Mental Health, Refugee

Services, and Substance Abuse. These programs are directed by the Secretary at the headquarters level and administered in 14 separate districts or regions that are managed by a District Administrator.

The Developmental Disabilities Program

Within the department, the Developmental Disabilities program provides support services to enable persons with developmental disabilities to live productive lives and achieve personal outcomes. The program is comprised of two main components, developmental disabilities institutions¹ and community-based care. The program is administered through a central program office in Tallahassee, four state developmental disabilities institutions, and 14 district/regional developmental disabilities offices.

Most client services are provided contractually by community-based care providers and are paid for through the use of federal waivers (that are managed by the Agency for Health Care Administration) and general revenue funding. These services may include medical care, therapy, vocational training and employment, case management, residential and basic care, daily living assistance, transportation, and recreation.

During recent years, the Developmental Disabilities program has run millions of dollars over budget despite significant funding increases. Further, the program has consistently maintained a long list of clients who are waiting for services. At the Legislature's request, a program review conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA)² focused on the rising costs of the Developmental Disabilities program. An analysis of program expenditure data for FY 1996-97 through FY 2000-2001 found errors that OPPAGA reported made it impossible for the department to accurately assess the number of services that a client received or the average rate paid for the different units of service. Since this study, and at the direction of the Legislature, the department conducted a program redesign of the home and community-base waiver program and developed a methodology for standardized service rates. These initiatives were conducted to help the program contain expenditures and reduce the number of persons who were waiting to receive services.

Following the implementation of the standardized rate payment in July 2004, the department conducted a fiscal analysis of expenditures for the first quarter. Budget projections reflected that the rate of spending would exceed the annual funding allocated for the program. Based upon this analysis, the department implemented emergency rate reductions. However, further analysis reflected that the department's projections had been faulty.

Concerns have been expressed that the management of the Developmental Disabilities program has been neglected and does not receive the attention that is needed in a department as large and diverse as DCF. It has been suggested that the program could be more efficiently managed if it

¹ There are four state institutions operated by the developmental disabilities program. They include Sunland, in Jackson County, Tacachale, in Alachua County, Gulf Coast, in Lee County, and Landmark in Miami-Dade County. The developmental disabilities program also operates the Mentally Retarded Defendants Program that is located on the grounds of Florida State Hospital in Gadsden County. There are more than 3000 staff employed at these sites.

² Legislative Options to Control Rising Developmental Disabilities Costs, Report No. 02-09, February 2002, Office of Program Policy Analysis and Government Accountability.

was separated from the Department of Children and Families. It has also been suggested that the fiscal management of the program could be better managed at the Agency for Health Care Administration, the agency that currently shares responsibility for the management of the federal waiver programs, including the Developmental Disabilities waiver, which accounts for an increasing proportion of that program's focus.

Administration of Public Assistance Eligibility

The Economic Self-Sufficiency (ESS) program of the department is responsible for determining eligibility for food stamps, Temporary Assistance for Needy Families (TANF), Medicaid, and Refugee cash assistance. More than 7,367 individuals are employed by the ESS program who, during FY 2002-2003, processed more than 1.4 million eligibility applications and assisted more than 2.7 million clients.³ The Florida Legislature has provided direction to the department in both 1997 and in 2003 to examine and begin pursuing the option of outsourcing the eligibility determination function for Medicaid, food stamps, and TANF.

In response to the 2003 legislative directive in the General Appropriations Act for 2003-2004 proviso language, the department has embarked upon a modernization initiative for the ESS program. This modernization initiative has focused on soliciting bids for most of the ESS eligibility determination functions with the goal of simplifying the ESS process and utilizing other innovations to create more efficiencies in the program such as a call/change center and internet innovations. The department has released the Request for Information to receive comments on the program requirements and the draft solicitation document from which the formal solicitation document will be finalized and released with an anticipated contract execution date of July 2004. At this time, the department estimates a 5-year contract for approximately \$1.2 billion (or \$220 to \$250 million per year). The department's plan for outsourcing eligibility determination includes the option of awarding a contract to a single vendor for statewide implementation. The possibility that a single vendor would be chosen has raised the concern that such an arrangement would shift so much power to the vendor that the state might be at a great and expensive disadvantage when negotiating future contracts and the concern that if the vendor failed, the state would be left with no capacity to fill the void and continue to provide the functions.

The employees of the department have been developing an employee plan for achieving the required efficiencies. The department reports that the employees' plan will be compared with the selected private sector plan after the competitive procurement process at which time a decision will be made as to whether to contract with the private sector vendor or utilize the employees' plan.

³ *Economic Self-Sufficiency Eligibility Process: A Study in Conjunction with DCF Reengineering Initiatives*, Internal Audit of the Office of Inspector General of the Department of Children and Families, November 26, 2003.

III. Effect of Proposed Changes:

The Committee Substitute for SB 1280 moves the Developmental Disabilities program from the department by a type 2 transfer and establishes the program as “The Agency for Persons with Disabilities” (APD). This agency is to be administratively housed within the Department of Children and Family Services but established as a separate budget entity that is not subject to the control, supervision, or the direction of the department. A director for this agency is to be appointed by the Governor and is authorized to hire staff within appropriated resources.

The agency is to be responsible for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. The agency is to retain programmatic responsibilities for all programs and the fiscal management of the developmental disabilities institutions. However, fiscal management for the provision of waiver services is to be managed by the Agency for Health Care Administration.

The Agency for Persons with Disabilities is directed to enter into inter-agency agreements with AHCA and DCF that delineates certain specified responsibilities of each organization. These agreements should also address the provision of operational support for the new agency as well as reimbursement mechanisms.

Level 2 screening is required for certain positions and volunteers and must additionally include local criminal checks through local law enforcement agencies. Exceptions to these screening requirements are identified.

The committee substitute also provides clarifying language in certain sections, revises definitions, and repeals obsolete language.

The bill directs the Agency for Persons with Disabilities, AHCA, and DCF to work together to develop a plan that ensure all necessary electronic and paper-based data is accessible to the Medicaid Program. Additionally, an agreement is to be developed with the department to provide the administrative and day-to-day operational support for the agency.

The Office of Program Policy and Government Accountability must identify and evaluate statewide entities receiving state funding to provide services for persons with developmental disabilities. A report from OPPAGA is due to the Governor and the Legislature by December 2005.

Section 1: The Committee Substitute for SB 1280 amends s. 20.19, F.S., removing the Developmental Disabilities program from the Department of Children and Families.

Section 2: The CS for SB 1280 creates s. 20.197, F.S., establishing the Agency for Persons with Disabilities that is to be administratively housed within the Department of Children and Family Services. The agency is to be a separate budget entity that is not subject to the control, supervision, or direction of the department in any manner.

The director of the agency is to be appointed by and serve at the pleasure of the Governor. The director is required to administer the affairs of the agency and establish administrative units as

needed. The director is also authorized to employ assistants, professional staff, and other employees, within appropriated resources, that are needed to discharge the powers and duties of the agency. The agency is responsible for the provision of all services pursuant to chapter 393, F.S., for persons with developmental disabilities. These responsibilities include the operation of all state institutional programs and the programmatic management of the Medicaid waiver programs. The agency is further directed to engage in other administrative activities that are deemed necessary to effectively and efficiently address the needs of clients who are served by the Agency for Persons with Disabilities.

The agency is directed to enter into an interagency agreement that delineates the responsibilities of the Agency for Health Care Administration for:

- The terms and execution of contracts with Medicaid providers for the provision of services through Medicaid, including federally approved waiver programs,
- The billing, payment, and reconciliation of claims for Medicaid services that are to be reimbursed by the agency,
- The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost effective provision of needed Medicaid services and to maximize the number of persons with access to such services, and
- A system of approving each client's plan of care to ensure that the services provided are necessary to prevent the client requiring services of an intermediate care facility for the developmentally disabled.

Section 3: This section of the bill amends s. 393.063, F.S., *Definitions*, deleting terms that are no longer used in the chapter: "active treatment," "developmental training facility," "rehabilitation workshop facility," and "supported employee." This section also establishes new definitions for the terms "agency," "day habilitation service," and "residential rehabilitation." Certain other definitions are clarified and updated.

Section 4: Amends s. 393.064(1), F.S., *prevention*. This section deletes the requirement that the department identify prevention funding needs in its annual legislative budget request. The department reports that this change will reduce the duplication of program services provided by Children's Medical Services (which is responsible for early intervention program for persons 0 – 3 years of age) and the Developmental Disabilities Council (which is currently responsible for prevention/awareness programs).

Section 5: Amends s. 393.0655, F.S., *screening of direct service providers*. This section continues the requirement that direct service providers receive a level 2 employment screening. The bill specifies that identified positions and volunteers must receive this screening. Background screening must additionally include local criminal checks through local law enforcement agencies. Exceptions to these screening requirements include:

- Volunteers assisting on an intermittent basis for fewer than 40 hours a month if the person is under the direct and constant supervision of persons meeting the screening requirements of this section;
- Physicians, nurses, or other professionals licensed and regulated by the Department of Health (DOH) who are providing services within their scope of licensed practice;

- Persons providing supports or services to an individual with developmental disabilities who are selected and paid by the individual or the individual's family; and
- Persons living with the direct services provider who are between the ages and 12 and 18 years who are only required to be screened for delinquency records.

Section 6: Amends s. 393.066, F.S., *community services and treatment for persons who are developmentally disabled*. This section:

- Deletes language specifying that programs of services and treatment for clients are to be administered through the districts to serve all clients regardless of the setting they live in.
- Specifies that all elements of community based services are to be made available and be provided consistently statewide rather than by district.
- Deletes language reflecting the intent of the Legislature for the department to prioritize appropriations for community-based services and the requirement that the department's five year plan reflect this prioritization of individualized, community-based supports and services for consumers and their families.
- Directs the agency to provide supports and services, within available resources, to assist Medicaid waiver clients who pursue gainful employment.
- Deletes language authorizing the department to permit construction of a residential facility.
- Deletes language allowing the department to adopt rules to ensure compliance with federal laws or regulations that apply to services provided in s. 393.066, F.S.

Section 7: Amends s. 393.0661, F.S., *home and community-based services delivery and comprehensive redesign*.

This proposed committee substitute amends s. 393.0661(1), F.S., removing directions to the department to include certain elements in the plan for system redesign. These tasks have been finalized.

The agency is also directed to utilize an assessment instrument that is valid and reliable to identify the support needs of clients. The agency is authorized to contract with an external vendor or to use support coordinators to complete the client assessment if the proper safeguards and training have been developed to ensure inter-rater reliability. The agency may, with the concurrence of AHCA, contract for services to determine the medical necessity of services and to establish individualized budgets for clients.

Section 8: Amends subsections (1) and (2) of section 393.068, F.S., relating to the family care program. This section:

- Deletes language reflecting that the Legislature recognizes the importance of family support in the long range success of deinstitutionalization and that core elements of caring for an individual who is developmentally disabled is support and flexibility of coordinating support and services.
- Specifies that the services and supports authorized under this program are contingent upon the availability of resources, strikes a redundant reference to parent training and respite care and adds supported employment to the list of authorized services.
- Deletes language prioritizing appropriations for family-based services and supports for persons with developmental disabilities and the requirement for this priority to be

reflected in the department's five year plan. The department reports that five year plans are no longer developed.

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Section 9: Amends s. 393.0695, F.S., *provision of in-home subsidies*. This section is amended to delete obsolete provisions and to change reference from the department to the agency.

Section 10: This section amends s. 393.11, F.S., *involuntary admission to residential services*. This section is amended to delete obsolete provisions and to change reference from the department to the agency.

Section 11: This section amends s. 393.13, F.S., *personal treatment of persons who are developmentally disabled*. Based on the legislative intent that services for persons with disabilities should be directed by normalization principles, the bill directs that services should reduce the use of sheltered workshops and other non-competitive employment activities and promote opportunities for gainful employment for persons who seek such employment. The bill also deletes the requirement to develop a plan for implementation of meaningful treatment programs.

Section 12: This section amends s. 393.17, F.S., *behavioral programs; certification of behavior analysts; fees*. Current language requiring the department to by rule implement and manage a behavior analyst certification program and reflecting the minimum requirements for certification has been deleted. The proposed language authorizes the agency to recognize certification of behavior analysts awarded by a non-profit corporation if the corporation's work has the support of the Association for Behavior Analysis International. This change may result in persons becoming certified behavior analyst, who do not meet the requirements that are currently established in rule which are to ensure that qualified persons oversee the design and implementation of programs for persons with developmental disabilities.

Section 13: This section amends s. 393.22, F.S., *transfer of appropriations; barriers to services; financial commitment to programs*. This legislation deletes:

- Provisions that the transfer of funding from the developmental services program if the secretary determines such a transfer will not adversely effect treatment programs; and
- Prohibition against the reduction of an ongoing commitment of funding to services for persons with mental retardation, cerebral palsy, autism, or spina bifida because of the development of programs for other disabilities.

Section 14: This section amends s. 393.502, F.S., *family care councils*. This section:

- Specifies that a family care council will be established in each service area of the agency rather than each district.
- Deletes the provisions for appointments to the council, when the Governor does not act on a recommendation for membership within a specified time period and deletes the terms of membership.

Section 15: This section amends s. 408.301, F.S., *legislative findings*. This section is amended to delete obsolete provisions and to change references from the department to the agency. The Department of Elder Affairs (DOEA) is included in this section as an example of clients with

special needs. The bill further directs AHCA to include DOEA in the development of plans to assure that the needs of special clients are met.

Section 16: This section amends s. 408.302, F.S., *interagency agreement*. This section is amended to delete obsolete provisions and to require that AHCA enter into interagency agreements with APD and DOEA, in addition to the currently required DCF and Department of Health, to assure coordination and to provide for these agencies' prior to approval of AHCA rules that impact their respective missions.

Section 17: This section amends s. 409.906, F.S., and deletes language that is no longer used relating to the "Project AIDS Care Waiver."

Section 18: Repeals ss. 393.068(8), 393.14, 393.165, and 393.505, of the Florida Statutes:

- Subsection 393.068(8), F.S., specifies that a receiver may be held personally liable only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty;
- Section 393.14, F.S., specifies the requirements of a multiyear plan;
- Section 393.165, F.S., relates to legislative findings that non-institutional home and community-based services are cost effective and an appropriate alternative to institutional care; and
- Section 393.505, F.S., authorizes the department to initiate projects to demonstrate the effectiveness of day treatment services.

Section 19: This section specifies that effective October 1, 2004, the Developmental Disabilities program and the developmental disabilities institutions programs in the department are transferred to the Agency for Persons with Disabilities by a type 2 transfer pursuant to s. 20.06, F.S. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources within the department dedicated to the Developmental Disabilities program that are to be transferred to the agency and are to determine who within the department will provide administrative support to the agency.

The director of APD is directed to work in consultation with the Secretaries for DCF and AHCA or their designees to prepare a transition plan that at a minimum addresses building leases, information support systems, cash ownership and transfer, administrative support functions, inventory, expenditure transfers, budget authority and positions, and certifications forward. This plan is to be submitted by September 1, 2004, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill directs that the Agency for Persons with Disabilities and the Department of Children and Family Services are to work with AHCA to develop a plan that ensures all of the necessary electronic and paper-based data of the Developmental Disabilities program is accessible to the Medicaid program. All electronic records are to be migrated to a new data system that is compatible with the Florida Medicaid Management Information System.

The Agency for Persons with Disabilities and AHCA are directed to develop a plan for the orderly relocation of the non-central office staff of APD to the area offices of AHCA. This plan is to include a schedule that takes into consideration the availability of space, the expiration of

current leases and the initiation of new leases to accommodate the relocated staff as well as appropriate reimbursement for collation costs, office space, and other operating expenses.

Effective October 1, 2004, the Agency for Persons with Disabilities is to enter into an interagency agreement with DCF for the provision of day-to-day administrative and operational needs until the agency no longer requires the provision of services through such an agreement. These administrative and operational services include, but are not limited to, personnel, purchasing, information technology support, legal support, and other related services.

Any pending judicial or administrative proceedings on October 30, 2004, are not affected by this act. The Agency for Persons with Disabilities is to be substituted as the real party of interest in respect to any pending proceedings.

Section 20: Directs OPPAGA to identify and evaluate statewide entities receiving state funding for the purpose of addressing the interests of, but not directly providing services for, persons with disabilities. The stated purpose of this analysis is to provide findings and recommendations relating to:

- The extent to which the activities of these entities are coordinated;
- The similarities and differences in the organizational missions of these entities; and
- The amount of state funds provided to these entities for the purpose of addressing the interests of persons with disabilities, the uses of these funds, and whether they duplicate the efforts of other private or federally funded entities.

A report is to be completed and provided to the Governor and the Legislature by December 2005.

Administration of Public Assistance Eligibility

Section 47: Authorizes the department to provide its eligibility determination functions with either department staff or through a contractual agreement with one or more private vendors. These functions are currently provided by the Economic Self-Sufficiency Services Program Office. This legislation adds further structure to the existing proviso language for outsourcing. The following restrictions apply:

- A contract may not include a geographic area larger than a combined seven districts or a combined three zones without the prior approval of the Legislative Budget Commission (with the exception of information technology)
- Jobs that are made available through any contract must be located within the United States and preference is to be given to contractors providing jobs to residents of this state; and
- Department employees are to provide the eligibility determination functions in at least two districts or one zone.

This section is to take effect upon becoming a law.

This act is to take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Governor and the Department of Children and Family Services report that there will be no fiscal impact associated with this bill. However, the organizational structure proposed for the new agency includes the positions of Deputy Director of Staff, General Counsel, Senior Attorney, Inspector General, and a Deputy Director of Operations and their staffs. Offices for Legislative Affairs, Communications, Administrative Services, and Information Technology are also proposed. These offices and positions are not currently established in the Developmental Disabilities Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.